

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1055 / 09-0752  
Filed March 10, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**IOWA DISTRICT COURT FOR  
WEBSTER COUNTY (Travis Troy Roberts),**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Webster County, Thomas J. Bice,  
Judge.

The State filed a petition for a writ of certiorari contending the district court  
should not have restored a defendant's deferred judgment, which had been  
revoked in 1992. **WRIT SUSTAINED, ORDER ANNULLED, AND REMANDED  
FOR FURTHER PROCEEDINGS.**

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney  
General, and Timothy N. Schott, County Attorney, for appellant.

Derek Johnson, Fort Dodge, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**VOGEL, P.J.**

The State seeks a writ of certiorari to reverse the district court's order restoring defendant Travis Roberts's deferred judgment, which was revoked<sup>1</sup> in 1992. We review for correction of errors at law. *State Pub. Defender v. Iowa Dist. Ct.*, 744 N.W.2d 321, 321 (Iowa 2008).

The procedural facts can be succinctly summarized as follows: In 1990, Roberts plead guilty to one count of forgery, received a deferred judgment and was placed on probation for one year, which was extended on Roberts's motion to allow him more time to pay restitution. On the recommendation of Roberts's probation officer, citing non-compliance with the requirements for his probation as well as having several fifth-degree theft convictions, the district court found Roberts had violated the terms and conditions of his probation and "revoked" Roberts's deferred judgment. However, the court found, "it appears that he could still be successful on probation" and therefore imposed a five-year prison sentence, then suspended his sentence, and placed him on probation. The court also found Roberts to be in contempt of court for violating his conditions of probation and imposed a forty-five day jail sentence. The court relied on Iowa

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<sup>1</sup> We use the district court's terminology of "revoking" a deferred judgment, but recognize Iowa Code section 907.3 (1992) and (2009) utilizes the term "may withdraw the defendant from the program," that is probation; and Iowa Code section 908.11 (1992) and (2009) reads "revoke the probation." Following revocation of probation, judgment is pronounced and sentence entered.

Code section 907.3 (1992)<sup>2</sup> to revoke probation, pronounce judgment, and impose sentence on the forgery charge, and Iowa Code section 908.11<sup>3</sup> to hold Roberts in contempt of court.

In 2009, Roberts was arrested on several counts of being a felon in possession of various firearms. He then moved to have the district court find an illegal sentence had been imposed in 1992. He asserted the entry of judgment and sentence on the forgery charge that had previously been deferred, coupled with imposing sentence of forty-five days in jail on the contempt finding, was an illegal sentence. As the sentence on the contempt finding had already been served, Roberts sought to have the deferred judgment reinstated. The district court did not discuss Iowa Code section 907.3, but found Iowa Code section 908.11 to control and that the remedies available in that section for probation violations were in the alternative, rather than in the conjunctive. The court then

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<sup>2</sup> In 1992, Iowa Code section 907.3(1) provided in part, With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such conditions as it may require. Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

<sup>3</sup> In 1992, Iowa Code section 908.11 provided in part, If the violation is established, the court may continue the probation with or without an alteration of the conditions of probation. If the defendant is an adult the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation, order the defendant to be placed in a violator facility established pursuant to section 246.207 while continuing the probation, or revoke the probation and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

found that since Roberts had what appeared to be two punishments for the same offense (violation of probation) and the forty-five day jail sentence had already been served, it restored the deferred judgment.

The State petitioned for a writ of certiorari. See Iowa R. App. P. 6.107. Our supreme court granted the petition, stayed the district court proceedings, and transferred the case to this court.

On appeal, the State argues the district court erred in restoring the deferred judgment. It asserts the court had the authority under Iowa Code section 907.3 both to impose judgment, which had been deferred, and to impose the forty-five day jail term for contempt of court, as a result of Roberts's probation violations. Roberts echoes the district court's analysis that concluded Roberts could not receive both a revocation of probation and be found in contempt for the same violation, and that this combination amounted to an illegal sentence. He then cites to Iowa Rule of Criminal Procedure 2.24(5), stating an illegal sentence can be corrected at any time. The State does not fault the ability of the district court to correct an illegal sentence, even one discovered seventeen years later, but asserts that "restoring a deferred judgment" is not the same as correcting an illegal sentence.

Under Iowa Code section 907.1(1), a deferred judgment is defined as "a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court." When a defendant receives a deferred judgment, "no conviction occurs in the strict legal sense because no adjudication of guilt is made." *State v. Farmer*, 234 N.W.2d 89, 92 (Iowa 1975); see also *State v. Stessman*, 460 N.W.2d 461, 462 (Iowa 1990) (holding there is no right of

direct appeal from a deferred judgment because a final judgment in the district court does not exist). Further, the court retains the power to revoke the defendant's probation upon noncompliance with the deferred judgment probationary conditions, and pronounce judgment and sentence. Iowa Code § 907.1.

In this case, in 1992 the district court withdrew Roberts from probation under section 907.3(1), entered judgment which had been deferred, sentenced Roberts to a five-year prison term, suspended the sentence, and again placed Roberts on probation. See *State v. Duckworth*, 597 N.W.2d 799, 800 (Iowa 1999); *State v. Lillibridge*, 519 N.W.2d 82, 84 (Iowa 1994) (discussing that revocation of probation proceedings are civil proceedings and not a stage in a criminal prosecution, but the following entry of a sentence is a final judgment in a criminal case). Roberts did not appeal the entry of the 1992 judgment on his forgery charge.<sup>4</sup> Accordingly, he may not collaterally attack it now. See Iowa Code §§ 715A.2 (forgery is a class D felony); 902.9 (sentence for a class D felony includes a five-year prison term and fine of \$7500) (1989); see also *State v. Bruegger*, 773 N.W.2d 862, 871-72 (Iowa 2009) (discussing that an illegal sentence is one the court lacked the power to impose). We agree with the State that revoking probation and entering a judgment that had been deferred does not equate to imposing an illegal sentence such that it could be corrected years later under Iowa Rule of Criminal Procedure 2.24(5). Roberts does not respond to the State's position nor cite any law that would advance his argument that revoking

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<sup>4</sup> Roberts claims he was unaware of the judgment entry, but the district court during the hearing appeared to question Roberts's credibility on this point.

probation and entering a judgment is the equivalent to imposing an illegal sentence. The pronouncement of judgment in 1992 was not an “illegal sentence,” which would allow the district court in 2009 to “restore” the deferred judgment. We therefore sustain the State’s writ and remand for further proceedings.

**WRIT SUSTAINED, ORDER ANNULLED, AND REMANDED FOR FURTHER PROCEEDINGS.**